

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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PATRICK KAKUDO, BRANDON KAKUDO,  
a Minor, by and through his  
Guardian ad Litem, HOLLY MATSUDA  
and HEIDI KAKUDO,

Plaintiffs,<sup>1</sup>

NO. CIV. S-04-0374 WBS KJM

v.

UNITED STATES OF AMERICA

Defendant.

PRETRIAL ORDER

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A Final Pretrial Conference was held in this matter,  
pursuant to the provisions of Rule 16(d) of the Federal Rules of  
Civil Procedure and Local Rule 16-282, on August 1, 2005.  
William C. Callaham appeared as counsel for plaintiffs; Bobbie  
Montoya appeared as counsel for defendant. After  
the hearing, the court enters this Final Pretrial Order:

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<sup>1</sup> Plaintiff Patrick Kakudo was dismissed from this case by  
stipulation and order on July 15, 2004.

1 I. Jurisdiction-Venue.

2 Jurisdiction is predicated upon 28 U.S.C. §§ 1346(b),  
3 and 2671 et seq. (The Federal Tort Claims Act). Venue is  
4 undisputed and is hereby found to be proper.

5 II. Jury-Nonjury.

6 Pursuant to 28 U.S.C. § 2402, trial of this matter  
7 will be by the Court.

8 III. Findings and Conclusions.

9 No later than ten court days before trial, counsel for  
10 plaintiffs shall lodge and serve the Findings of Fact and  
11 Conclusions of Law, which plaintiffs propose be entered at the  
12 conclusion of the trial pursuant to Fed. R. Civ. P. 52 and Local  
13 Rule 52-290. No later than five court days before trial,  
14 counsel for defendant shall lodge and serve the Findings of Fact  
15 and Conclusions of Law, which defendant proposes be entered.

16 IV. Trial Briefs.

17 No later than ten court days before the trial date,  
18 counsel for each party shall file trial briefs, which shall  
19 include any motions in limine, pursuant to Local Rule 16-285.  
20 No later than four court days before trial, the parties may file  
21 oppositions, if any, to the motions in limine.

22 V. Witnesses.

23 (A) Plaintiffs anticipate calling the witnesses  
24 identified at Exhibit "A" attached hereto.

25 (B) Defendant anticipates calling the witnesses  
26 identified at Exhibit "B" attached hereto.

27 (C) Except for retained experts, each party may call  
28 any witness designated by any other party.

1 (D) No other witnesses will be permitted to testify  
2 at trial unless:

3 (1) all parties stipulate that the witness may  
4 testify;

5 (2) the party offering the witness demonstrates  
6 that the witness is for the purpose of rebutting evidence which  
7 could not have been reasonably anticipated at the time of the  
8 Pretrial Conference; or

9 (3) the witness was discovered after the  
10 Pretrial Conference.

11 (E) Testimony of a witness not designated in this  
12 Order, which is offered under paragraph V(D)(3), above, upon the  
13 grounds that the witness was discovered after the Pretrial  
14 Conference, will not be permitted unless:

15 (1) the testimony of the witness could not  
16 reasonably have been discovered prior to the Pretrial  
17 Conference;

18 (2) the court and opposing counsel were promptly  
19 notified upon discovery of the testimony; and

20 (3) counsel proffered the witness for deposition  
21 if time permitted or provided all opposing counsel a reasonable  
22 summary of the testimony if time did not permit a deposition.

23 VI. Exhibits.

24 (A) Plaintiffs intend to offer the exhibits  
25 identified at Exhibit "C" attached hereto.

26 (B) Defendant intends to offer the exhibits  
27 identified at Exhibit "D" attached hereto.

28 (C) Each party may offer any exhibit designated by

1 any other party.

2 (D) No other exhibits will be received in evidence  
3 unless:

4 (1) all parties stipulate that the exhibit may  
5 be received in evidence;

6 (2) the party offering the exhibit demonstrates  
7 that the exhibit is for the purpose of rebutting evidence which  
8 could not have been reasonably anticipated at the time of the  
9 Pretrial Conference; or

10 (3) the exhibit was discovered after the  
11 Pretrial Conference.

12 (E) An exhibit not designated in this Order (or  
13 pursuant to this Order), which is offered under paragraph  
14 VI(D)(3), above, upon the grounds that the exhibit was  
15 discovered after the Pretrial Conference, will not be received  
16 in evidence unless:

17 (1) the exhibit could not reasonably have been  
18 discovered prior to the Pretrial Conference;

19 (2) the court and opposing counsel were promptly  
20 notified upon discovery of the exhibit; and

21 (3) counsel provided copies of the exhibit to  
22 all opposing counsel if physically possible or made the exhibit  
23 reasonably available for inspection by all opposing counsel if  
24 copying was not physically possible.

25 (F) Each party shall exchange copies of all exhibits  
26 identified in this Order (or pursuant to this Order), or make  
27 them reasonably available for inspection by all other parties,  
28 not later than seven calendar days before the trial date. Any

1 and all objections to such exhibits shall be filed and served  
2 not later than four calendar days before the trial date.

3 (G) The attorney for each party is directed to appear  
4 before trial and present an original (and if physically possible  
5 one copy) of each exhibit to Deputy Clerk Sally Hoover at 8:30  
6 a.m. on the date of trial.

7 (H) Each exhibit which has been designated in this  
8 Order (or pursuant to this Order) and presented on the morning  
9 of the date of trial shall be pre-marked by counsel.

10 Plaintiffs' exhibits shall bear numbers; defendant's exhibits  
11 shall bear letters. If no objection has been made to such  
12 exhibit pursuant to paragraph VI(F), above, such exhibit will  
13 require no further foundation and will be received in evidence  
14 upon the motion of any party at trial.

15 VII. Further Discovery and Motions.

16 No further motions shall be brought before trial  
17 except upon order of the court and upon a showing of manifest  
18 injustice. Fed. R. Civ. P. 16(e). No further discovery will be  
19 permitted except by the express stipulation of all parties or  
20 upon order of the court and upon a showing of manifest  
21 injustice. Id.\_\_\_\_\_

22 \_\_\_\_\_VIII. Date and Length of Trial.

23 The court trial is set for October 4, 2005, at 9:00  
24 a.m. in Courtroom No. 5. The court estimates that trial will  
25 last approximately three (3) trial days.

26 IX. Daubert Procedure

27 Any challenges based on Daubert v. Merrell Dow  
28 Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Kumho Tire Co.

1 v. Carmichael, 119 S. Ct. 1167 (1999) will be raised and  
2 resolved outside the presence of the jury just prior to when the  
3 challenged expert will be called to give testimony. Any  
4 challenged expert shall be present for such a challenge, and  
5 shall be available for questioning.

6 X. Settlement Conference

7 A Settlement Conference is set before the Honorable  
8 Frank C. Damrell in Courtroom No. 2 on August 16, 2005, at 10:00  
9 a.m.

10 Each party is ordered to have a principal with full  
11 settlement authority present at the conference or be fully  
12 authorized to settle the matter on any terms. No later than  
13 seven days before the date of the Settlement Conference, counsel  
14 for each party shall submit a confidential Settlement Conference  
15 Statement to the settlement judge.

16 XI. Objections to Pretrial Order.

17 Any objections or suggested modifications to this  
18 Pretrial Order shall be filed and served within five calendar  
19 days from the date of this Order. All references herein to the  
20 date of this Order shall refer to the date the tentative order  
21 is filed and not to the date any amended order is filed. If no  
22 objections or modifications are made, this Order will become

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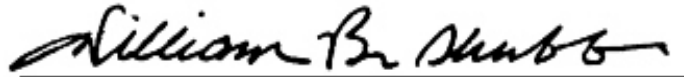
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1 final without further order of the Court and shall control the  
2 subsequent course of the action, pursuant to Rule 16(e) of the  
3 Federal Rules of Civil Procedure.

4 DATED: August 1, 2005.

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7 WILLIAM B. SHUBB

8 UNITED STATES DISTRICT JUDGE  
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Exhibit "A"

**Percipient Witnesses**

1. Heidi Kakudo
2. Patrick Kakudo
3. Kevin Penn (Postal Service Truck Driver)

**Nonretained Expert Witnesses (Treating Physicians and Physical Therapist)**

1. John Gisla, Jr., M.D.
2. Wendy Lin, M.D.
3. Rie Takakura, P.T.
4. Sean Nealon, M.D.
5. Marina Soosaipillai, M.D.
6. Dr. Ehyai, MedClinic of Sacramento
7. Robert Dimiceli, Officer, California Highway Patrol,  
(Badge #: 12152)



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Exhibit "B"

**Witnesses**

1. Robert Dimiceli, Officer, California Highway Patrol,  
(Badge #: 12152)
2. Geri Jordan
3. Heidi Kakudo
4. Kevin D. Penn
5. Aubrey A. Swartz, M.D., Pharm. D.
6. Defendant reserves the right to call any witness identified  
by plaintiffs

Exhibit "C"

**Plaintiffs' Exhibits**

A. Medical records of Plaintiffs.

B. Medical bills for treatment.

C. Photographs of vehicles.

Exhibit "D"

**Defendant's Exhibits**

- A. CHP Traffic Collision Report dated September 17, 2001, including CHP Factual Diagrams dated October 3, 2001 and CHP Narrative/Supplemental dated October 3, 2001
- B. Demonstrative evidence, including but not limited to the following:
  - 1. Diagrams
  - 2. Photographs
- C. Reports of defendant's expert Aubrey A. Swartz, M.D., Pharm. D.
- D. Plaintiff's administrative tort claims
- E. Plaintiff Heidi Kakudo's medical records
- F. Plaintiff Heidi Kakudo's medical billing records for treatment
- G. Plaintiff Brandon Kakudo's medical records
- H. Plaintiff Brandon Kakudo's medical billing records for treatment
- I. Defendant reserves the right to submit any exhibit identified by plaintiffs